

**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/411,106	10/04/99	ALLEMAN	G L-12396

VICKERS DANIELS & YOUNG
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CLEVELAND OH 44113-2235

IM51/1018

EXAMINER

COOKE, C

ART UNIT

PAPER NUMBER

1725

DATE MAILED:

10/18/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No.

09/411,106

Applicant(s)

ALLEMAN ET AL.

Examiner

Colleen P Cooke

Art Unit

1725

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 September 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-31, 48-61, 71-75 and 82.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Response to Arguments

Applicant's arguments filed 9/17/01 have been fully considered but they are not persuasive.

Applicant argues with respect to the rejection under 35 U.S.C. 112, first paragraph, that rotation of an object about an axes is known. This point is moot as it is irrelevant to the fact that there is no support in the specification for the axes as claimed in the apparatus. The applicant additionally argues that support can be found on page 16, lines 14-16 of the specification. Although this portion of the specification happens to mention central axes of the front and rear wheels, it does not provide sufficient basis to overcome the rejection. The specification is lacking support for the specifics of the claimed axes and a general reference to axes in the specification does not support these specifics. .

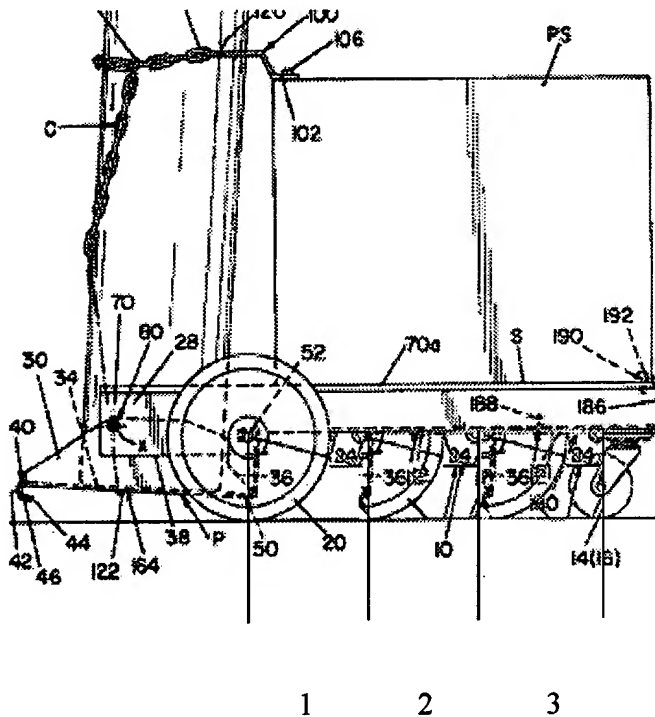
For example, claim 48 has been amended to recite that instead of *axles* being positioned on a base such that the center of gravity of the equipment lies on or between the *axles*, axes are positioned such that the center of gravity is between the axes. The specification does not describe where the axes are positioned on the base, presumably because the axes are imaginary lines and thus not positioned on the base at all. In addition, claim 48 also describes the *axes* being spaced apart less than about three times the sum of the radii of the front and rear wheels. The specification does not support this limitation at all because it instead supports the *axles* being positioned as such. As the limitations of claim 74 are nearly the same, the same arguments would apply. Hence the rejection under 35 U.S.C. 112 first paragraph of claims 48-61 and 73-82 stands.

Applicant argues with respect to the rejection of claims 1-31, 48-50, 52-61, 74, and 75 under 35 U.S.C. 103 over Karpoff (5730891) that the examiner improperly relies on Figure 1. In support of this argument, applicant cites *Hockerson-Halberstadt, Inc. v. Avia Group International, Inc.*, 55 USPQ2d 1487 (CAFC 2000), which applicant submits is exactly drawn to the issue at hand in the present case. This argument is not persuasive because *Hockerson v. Avia* establishes a different fact pattern than in the present case, and additionally is concerned with the prosecution history and definition of terms throughout.

The applicant goes on to argue that even if Figure 1 is used as asserted by the examiner it fails to disclose the recited structure. This argument is not persuasive because the applicant does not specify how the teachings are deficient but instead merely asserts that they are without evidence.

Applicant argues with respect to the rejection of claims 1-18 and 22-31 under 35 U.S.C. 103 over Karpoff (5730891) in view of Sueshinge that the examiner improperly relies on Figure 1 yet again. Referring to this figure, modified by the applicant, the applicant asserts that "the spacing of the front and rear axels is greater than three times the sum of the radii of the respective wheels" on page 5, lines 16-17 of the response. Not only does the applicant's modified Figure 1 not support this line of argument, but in fact this figure indeed shows a spacing of about 3 times the sum of the radii.

To this end, the examiner includes the figure below which clearly shows the front and rear axle spacing to be about three times the sum of the radii of the front and rear axles.



The applicants further arguments of the rejected claims all refer repeatedly to the arguments already addressed above concerning Figure 1 of Karpoff. As asserted above, these arguments are not persuasive and thus the rejection is maintained.

Conclusion


Any inquiry concerning this or earlier communications from the examiner should be directed to Colleen Cooke, whose telephone number is 703-305-1136. She can normally be reached Monday-Thursday from 7:15-5:45pm.

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If attempts to reach the examiner by telephone are unsuccessful, her supervisor, Thomas Dunn, can be reached at 703-308-3318. The official fax number for the organization where this application or proceeding is assigned is 703-305-6078. The unofficial fax number for this examiner is 703-746-3048.

Any inquiry of a general nature relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is 703-308-0661.

CPC 10/1/2001


TOM DUNN
SUPERVISORY PATENT EXAMINER
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